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30 MAY 2008

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In re Application of : DECISION ON PETITION
GRAHAM, et al. :
U.S. Application No.: 09/646,807 :
PCT No.: PCT/AU99/00195 : UNDER 37 CFR 1.78(a)(3)
Int. Filing Date: 19 March 1999 :
Priority Date: 20 March 1998 :
Atty Docket No.: 0763/74768-B-PCT-US/JPW/G :
For: CONTROL OF GENE EXPRESSION :

This is a decision on the "Petition For Unintentionally Delayed Claim For Priority Under 37 CFR §1.78(a)(3)" filed 28 December 2006 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

The present application is a national stage under 35 U.S.C. 371 of international application PCT/AU99/00195, filed 19 March 1999. The international application publication indicates that in the international phase applicants claimed the priority of two Australian applications numbered PP 2492 and 2499, filed 20 March 1998.

On 20 September 2000, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee and a preliminary amendment.

On 12 March 2001, applicant was mailed a "Notice of Acceptance" (Form PCT/DO/EO/903).

On 28 December 2006, applicants filed "Petition For Unintentionally Delayed Claim For Priority Under 37 CFR §1.78(a)(3)" which request that Office accept as unintentionally delayed a claim to Australian application PP 2492 as indicated in the concurrently filed amendment.

DISCUSSION

The instant application has an international filing date of 19 March 1999. The petition procedure under 37 CFR 1.78 (a)(3) only applies to U.S. national phase applications filed on or after 29 November 2000. (37 CFR 1.78(a)(2)(ii)). Accordingly, the petition is dismissed as moot. It is also noted that the provisions of 37 CFR 1.78 do not govern foreign priority claims. Accordingly, it is not necessary to amend the first sentence of the specification to identify the inadvertently omitted reference to the Australian patent application.

CONCLUSION

The "Petition For Unintentionally Delayed Claim For Priority Under 37 CFR §1.78(a)(3)" filed 28 December 2006 is DISMISSED as MOOT.

The \$1370.00 petition fee will be refunded.

Any inquiries concerning this decision may be directed to Derek A. Putonen, Attorney Advisor, at (571) 272-3294. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center Art Unit 1635 for continued examination in due course.



Boris Milef
Legal Examiner
Office of Petitions and Office of PCT Legal Administration